



7020-02

INTERNATIONAL TRADE COMMISSION

CERTAIN COENZYME Q10 PRODUCTS AND METHODS OF MAKING SAME

Investigation No. 337-TA-790

COMMISSION DETERMINATION (1) TO REVIEW AND AFFIRM WITH RESPECT TO TWO ISSUES, (2) TO REVIEW AND VACATE WITH RESPECT TO ONE ISSUE, AND (3) NOT TO REVIEW THE REMAINDER OF THE FINAL INITIAL DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE; TERMINATION OF THE INVESTIGATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined the following: (1) to review and affirm (a) the finding that Mitsubishi Gas Chemical Co., Inc. (“MGC”) does not satisfy the 70 mole % limitation, and (b) the claim construction of “inert gas atmosphere” with respect to the asserted claims of U.S. Patent No. 7,910,340 (“the ‘340 patent”); (2) to review and vacate the finding that certain asserted claims of the ‘340 patent are not invalid under the new matter prohibition of 35 U.S.C. § 132; and (3) not to review the remainder of the final initial determination of the administrative law judge (“ALJ”) in the above-captioned investigation. This action terminates the investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436,

telephone (202) 205-3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 19, 2011, based on a complaint filed on June 17, 2011, by Kaneka Corp. of Osaka, Japan (“Kaneka”), and supplemented on June 24 and 27, 2011. 76 *Fed. Reg.* 42729 (July 19, 2011). The complaint alleged violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the sale for importation, importation, or sale after importation into the United States of certain coenzyme Q10 products by reason of infringement of certain claims of the ‘340 patent. The Commission’s notice of investigation named as respondents Zhejiang Medicine Co., Ltd. of Zhejiang, China; ZMC-USA, LLC of The Woodlands, Texas; Xiamen Kingdomway Group Co. of Xiamen, China; Pacific Rainbow International Inc. of City of Industry, California; MGC of Tokyo, Japan; Maypro Industries, Inc. of Purchase, New York (“Maypro Inc.”); and Shenzhou Biology & Technology Co., Ltd. of Beijing, China.

On January 12, 2012, the Commission issued notice of its determination not to review an

ID granting a motion to amend the complaint and notice of investigation to add a new respondent, Mitsubishi Gas Chemical America, Inc. of New York, New York and to replace respondent Maypro Inc. with Maypro Industries, LLC of Purchase, New York.

An evidentiary hearing was held from July 9-13, 2012.

On September 27, 2012, the presiding ALJ (Judge Rogers) issued a final initial determination (“final ID” or “ID”) finding no violation of section 337. The ALJ also issued a recommended determination on remedy and bonding.

Specifically, the ALJ found that the imported products were not shown to be manufactured by processes covered by the asserted claims. The ALJ found that Kaneka satisfied the economic prong of the domestic industry requirement but failed to satisfy the technical prong of the domestic industry requirement. The ALJ found that the asserted claims were not shown to be invalid.

On October 10, 2012, Kaneka filed a petition for review of the final ID. The Respondents and the Commission investigative attorney (“IA”) filed contingent petitions for review. On October 18, 2012, each party filed a response (with Kaneka filing separate responses to the Respondents and the IA).

Having reviewed the final ID, the petitions for review, and the record in this investigation, the Commission has determined the following: (1) to review and affirm (a) the finding that MGC does not satisfy the 70 mole % limitation, and (b) the claim construction of “inert gas atmosphere” with respect to the asserted claims of the ‘340 patent; (2) to review and vacate the finding that the asserted claims of the ‘340 patent are not invalid under the new matter prohibition of 35 U.S.C. § 132; and (3) not to review the remainder of the final initial

determination of the ALJ, including the ALJ's finding that certain asserted claims of '340 patent are not invalid under 35 U.S.C. § 112. This action terminates the investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and of section 210.42(h) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42(h)).

By order of the Commission.

Lisa R. Barton

Acting Secretary to the Commission

Issued: November 29, 2012

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